

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Massachusetts Electric Company and)
Nantucket Electric Company “Now Is)
the Time to Choose” Program)
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D.T.E. 03-123

COMMENTS OF CONSTELLATION POWER SOURCE, INC.

Constellation Power Source, Inc. (“CPS”), a wholesale supplier of power to distribution companies in Massachusetts, New England and throughout the United States, is pleased to provide comments with respect to the proposed “Now is the Time to Choose Program” (“Time to Choose Program”) submitted to the Department of Telecommunications and Energy (“Department”) on October 30, 2003 by Massachusetts Electric Company and Nantucket Electric Company (together, “Mass. Electric”).

I. Introduction

CPS is a power marketing company that engages in wholesale power marketing activities throughout the United States. CPS is an active participant in the New England Power Pool markets administered by ISO-NE. CPS is an indirect subsidiary of Constellation Energy Group, Inc. CPS has executed three wholesale Standard Offer contracts with Mass. Electric which are potentially affected by the proposed program – two (2) December 21, 1998 Wholesale Standard Offer Service agreements between CPS and Blackstone Valley Electric Company, Eastern Edison Company and Newport Electric Corporation (together, “1998 CPS Wholesale Agreements”), and a Standard Offer Power Supply Agreement between CPS and Mass. Electric.

CPS is a strong and consistent advocate of competition in wholesale and retail electricity markets and participates in such markets nationwide. Fundamental to CPS' participation are competitive markets, both at the wholesale and retail level, with clear and articulated rules that market participants can rely on to provide a reasonable degree of market and regulatory certainty. CPS is submitting comments in this proceeding because it believes that, if implemented, the Time to Choose Program will not be consistent with Mass. Electric's settlement agreements and will send inaccurate price signals to the marketplace – a result which is incompatible with the development of robust wholesale and retail markets and as described below is inconsistent with the Restructuring Act and the Department's consistently articulated restructuring policies.

Under its Time to Choose Program, Mass. Electric, among other things, proposes to maintain its Standard Offer Service Fuel Adjustment ("SOSFA") at the current level of 1.424 cents per kilowatt-hour for the period January 1, 2004 through February 28, 2005, *i.e.*, through the end of the Standard Offer Service period in Massachusetts. In its proposal, in addition to seeking permission to implement its Time to Choose Program, Mass. Electric specifically asks the Department to find that the proposed Time to Choose Program "is consistent with Mass. Electric's restructuring settlement and wholesale Standard Offer contracts approved by the Department in Docket No. D.P.U./D.T.E. 96-25."

On December 12, 2003, Mass. Electric filed with the Department a request to defer for thirty days, until January 14, 2004, the deadline for submitting comments regarding that portion of the Time to Choose Program in which Mass. Electric seeks a finding that the proposed Program is consistent with its restructuring settlements and its Wholesale Standard Offer contracts. In that same letter, Mass. Electric asks the Department to maintain the Department's

December 15, 2003 deadline for filing comments on that portion of the Time to Choose Program filing in which Mass. Electric seeks the Department's approval to fix its SOSFA at 1.424 cents per kilowatt-hour through the end of the Standard Offer Service period. Finally, in support of its request to fix its SOSFA, Mass Electric's December 12, 2003 letter includes an attachment showing for the first time what Mass. Electric's SOSFA would be if it were calculated consistent with Department precedent relative to the SOSFA.¹

While CPS favors the continued development of competitive wholesale and retail electricity markets, CPS does not believe that the Department should allow Mass. Electric to move forward with its Time to Choose Program because it is inconsistent with the Restructuring Act, as well as with the Department's consistently articulated restructuring policies, including the Department's policies relative to the SOSFA and the development of competitive wholesale and retail markets.

II. Mass. Electric's Proposed Time To Choose Program Is Inconsistent With The Restructuring Act, As Well As The Department's Consistently Articulated Restructuring Policies.

A. *The Time to Choose Program Conflicts with the Department's Objectives and Orders Regarding the SOSFA*

Mass. Electric's proposal to hold the SOSFA at 1.424 cents per kilowatt-hour through February 2005 under its Time to Choose Program is inconsistent with the Department's stated objectives in establishing a SOSFA mechanism in 2000. A uniform SOSFA mechanism was established in D.T.E. 00-66, 00-67, 00-70 (2000) ("SOSFA Letter Order"), where the

¹ It is CPS' understanding that the Department has granted Mass. Electric's December 12, 2003 request to defer the deadline for comments on other portions of Mass. Electric's Time to Choose Program. Accordingly, CPS will submit its comments on January 14, 2004 with respect to the consistency of the Time to Choose Program with Mass. Electric's Wholesale Standard Offer Supply contracts. CPS reserves the right to respond to any subsequent Mass. Electric filing regarding the Time to Choose Program and specifically, its consistency with the Restructuring Act, restructuring settlements and Mass. Electric's Wholesale Standard Offer Supply contracts.

Department implemented a SOSFA mechanism for the first time for Mass. Electric and other distribution companies, noting, among other things, that it was inappropriate to require all customers at some future date to pay for the deferred costs associated with under-recovery of Standard Offer Service fuel costs, with interest, when Standard Offer Service customers were the only customers paying prices that were significantly below cost. SOSFA Letter Order at 4. Here, the Department aptly noted that “[I]t is not equitable for future customers to pay higher rates in order to allow today’s standard offer service customers to pay prices that are significantly below cost” (id. at 4), and that “[E]quity requires us to ensure that customers on whose behalf costs are incurred are the same customers who bear those costs” (id. at 11). Therefore, it follows that since Standard Offer Service customers pay for these fuel costs through a SOSFA, it would be inappropriate for rates to be set in a manner that leads to an over-recovery that is then refunded to all customers at a later date.

Accordingly, the Department determined that, consistent with the Restructuring Act, it was appropriate to allow distribution companies to collect “properly supported fuel costs” through a SOSFA and that the “Department finds a clear benefit in adopting a uniform mechanism.” Id. at 5, 14. At the same time, the Department stated that “future decreases in the price of fuel oil and natural gas will automatically translate into adjustment or elimination of the SOSFA surcharge.” Here, the Department specifically noted: “[I]f fuel-input costs go down, so too will the recoveries allowed today, in accordance with the restructuring settlements and plans.” Id. at 5. The result of these findings by the Department was a uniform SOSFA calculation methodology that has been utilized by distribution companies.

Mass. Electric’s Time to Choose Program would operate in direct contravention to the principles of the Department’s SOSFA Letter Order. First, Mass. Electric is seeking to establish

its SOSFA at a level higher than “the properly supported fuel costs” required by the Department as a prerequisite for SOSFA. On December 1, 2003, Mass. Electric submitted to the Department its January 1, 2004 Retail Rate Filing, which sets out proposed rate adjustments for 2004 in accordance with the reconciliation and adjustment provisions of Mass. Electric’s approved restructuring settlement (hereinafter the “Mass. Electric December 1, 2003 Reconciliation Filing”). The Mass. Electric December 1, 2003 Reconciliation Filing does not include the SOSFA calculations required by the SOSFA Letter Order and Mass. Electric’s restructuring settlement. Instead, the Mass. Electric December 1, 2003 Reconciliation Filing simply refers to Mass. Electric’s plan to fix the SOSFA at 1.424 cents per kilowatt-hour through the end of 2004 as set forth in Mass. Electric’s Time to Choose Program filing. Mass. Electric December 1, 2003 Reconciliation Filing, Direct Testimony of Theresa Burns at 5, n.3.²

Further, in the Mass. Electric December 1, 2003 Reconciliation Filing, Mass. Electric’s approach to establishing a SOSFA for 2004 is in striking contrast to the filings of Cambridge Electric Light Company and Commonwealth Electric Company (together, “NSTAR”), and Fitchburg Gas & Electric Light Company (“FG&E”), distribution companies, which up to now, calculated SOSFA in the same manner as Mass. Electric. On December 3, 2003, NSTAR submitted its SOSFA filing, seeking to reduce its SOSFA from 1.424 cents/kilowatt-hour to 1.222 cents/kilowatt-hour, effective January 1, 2004. NSTAR noted that its SOSFA calculation was consistent with the Department’s SOSFA Letter Order, and previous SOSFA calculations for NSTAR.

² On December 12, 2003, as part of its request to defer the deadline for comments on some, but not all issues, raised by its Time to Choose Program filing, Mass. Electric for the first time provided an indication of what its SOSFA charge would be effective January 1, 2004, if Mass. Electric calculated its SOSFA consistent with the SOSFA Letter Order. However, as described in footnote 4, Mass. Electric has not fully supported its calculation or provided adequate time for others to analyze this new information.

Similarly, as part of its 2003 reconciliation filing, FG&E seeks to reduce its SOSFA from 1.424 cents/kilowatt-hour to 1.185 cents/kilowatt-hour, effective January 1, 2004. As is the case with NSTAR, FG&E states that its proposed SOSFA for January 1, 2004 is consistent with the uniform SOSFA mechanism approved by the Department in the SOSFA Letter Order, as well as previous SOSFA calculations by FG&E.³

The SOSFA proposed by Mass. Electric in its Time to Choose Program filing is higher than the SOSFAs proposed by NSTAR and FG&E because Mass. Electric's proposal fundamentally changes the way the SOSFA is calculated in a manner inconsistent with the Department's SOSFA Letter Order and Standard Offer Service tariff. This is because the SOSFA tariff provision requires that the trigger point increase each year, resulting in a lower fuel adjustment percentage even if fuel prices do not change. This effect can be seen in the SOSFA filings for FG&E and NSTAR. These companies' Standard Offer Service tariffs contain a fuel adjustment calculation identical to the one in the Mass. Electric settlement agreement and retail Standard Offer Service tariff, and all of the companies had identical SOSFAs in the current month. Their filings for the SOSFA that will apply beginning January 1, 2004 show that, although the twelve-month rolling average fuel prices used for the calculation have increased slightly, the fuel adjustment itself will decrease due to the higher fuel trigger point for 2004. Thus, NSTAR's proposed SOSFA decreases to 1.222 cents per kWh and FG&E's decreases to 1.185 cents per kWh beginning January 1, 2004. These other filings show that Mass. Electric's proposed SOSFA of 1.424 cents per kilowatt-hour does not reflect a difference in the data inputs

³ It appears that FG&E's January 1, 2004 SOSFA differs slightly from NSTAR's proposed SOSFA because of differences in the respective companies' Market Gas Price and Market Oil Price.

for the calculation, but a different calculation altogether, in violation of the Department's SOSFA Letter Order, Mass. Electric's tariff and its settlement agreement.

In support of the fixed SOSFA proposal in its Time to Choose Program, Mass. Electric argues that it has evaluated the reasonableness of its SOSFA surcharge under a range of scenarios based on two primary factors: (1) future fuel index payments during the period ending February 28, 2005, and (2) the migration rate of customers away from Standard Offer Service during that same period, and concludes that "the currently effective SOSFA is likely to remain reasonable and necessary through the remainder of the Standard Offer Service period...." Time to Choose Program filing at 4-5. However, by arguing that its fixed SOSFA is appropriate based on an analysis of future fuel prices, Mass. Electric is taking a position that previously has been rejected by the Department. As required by its settlement, tariffs, and the SOSFA Letter Order, periodic SOSFA filings are to be based on historic fuel price data, not forward gas and oil prices.

In fact, Mass. Electric already has gone down this road without success. In its SOSFA Letter Order, the Department stated that:

"...NSTAR and Fitchburg propose to use the most recent historic data, while MECo proposes to use forecasts to adjust their standard offer service rates. Having selected a uniform mechanism, we can see no compelling reason to support such differing approaches to the implementation of SOSFA. As with the adoption of a uniform mechanism, there is clear benefit in the uniform implementation of the SOSFA....With respect to whether to use forecasts or historic data, using historic data avoids the need for the Companies to forecast fuel prices, which will be driven by events beyond their control."

SOSFA Letter Order at 14-15. Neither Mass. Electric's Time to Choose Program filing nor the Mass. Electric December 1, 2003 Reconciliation Filing presents any compelling reason for abandoning the uniform methodology required by the Department, particularly where such methodology has been employed consistently by distribution companies in accordance with the SOSFA Letter Order since that Order was issued in 2000.

Moreover, as discussed further in Section II.E., below, there is no reason to artificially inflate Standard Offer Service rates at this time – a time when, even adding a SOSFA properly based on historic fuel prices – the total Standard Offer Service rate exceeds the fixed-price option for residential Default Service of 5.7 cents per kilowatt-hour (*See* Time to Choose Program filing at 3.)

Finally, in its Time to Choose Program proposal, Mass. Electric acknowledges the possibility that the SOSFA rate of 1.424 cents/kilowatt-hour may be too high, resulting in an overcollection during the Standard Offer Service period. Under this scenario, however, all of the Mass. Electric’s distribution customers would receive a credit “through a uniform cents per kilowatt-hour factor in the following year” pursuant to Section I.B.5(a) of the Company’s restructuring agreement. Time to Choose Program filing at 5. Of course, under this approach, customers of competitive suppliers and Default Service customers ultimately would receive a credit even though they were not required to pay a higher than necessary SOSFA charge, one which was not supported by actual fuel costs. As noted above, this is exactly the kind of the inequitable outcome that the SOSFA mechanism was designed to preclude, and as such, Mass. Electric’s proposed SOSFA in its Time to Choose Program filing should not be allowed to go into effect.⁴ *See* SOSFA Letter Order at 11.

⁴ Based on its December 12, 2003 letter, when employing the uniform methodology for calculating SOSFA as required by the Department’s SOSFA Letter Order, Mass. Electric’s Standard Offer Service customers would see a SOSFA *decrease* to 1.223 cents per kilowatt-hour beginning January 1, 2004, a SOSFA similar to those proposed by NSTAR and FG&E. Because this calculation was submitted just one business day in advance of the deadline for filing comments in the docket and without supporting documentation, CPS has not been able to fully analyze Mass. Electric’s formula-based SOSFA or its calculation of a Standard Offer Adjustment Factor (“SOAF”) that it states would be required in addition to its SOSFA of 1.223 cents per kilowatt-hour under the uniform SOSFA standard and allowed under its settlement agreements. Accordingly, CPS reserves its right to submit additional comments relative to this new information. At a minimum, however, CPS notes that this late-filed information from Mass. Electric does not fully explain the genesis and/or calculation of the SOAF or why the SOAF would continue after Mass. Electric’s deferral balance reaches zero. *See* Mass. Electric December 12, 2003 Letter, Attachment. However, given the filings of the other distribution companies, CPS recommends that the Department approve the 1.223 cent per kilowatt-hour SOSFA for Mass. Electric effective January 1, 2004, and defer the SOAF decision until more

B. The Department's Restructuring Policy Has Been to Eliminate Barriers to Competition, Not to Artificially Inflate Prices or Otherwise Disturb Market Forces

While the Department has taken a number of steps to expand the range of competitive options available to consumers in the restructured electricity market in Massachusetts, these steps appropriately have been limited to minimizing or eliminating barriers to competition. In Competitive Market Initiatives, D.T.E. 01-54 (2001), the Department recognized that, at that time, less than one percent of Massachusetts customers were being served by competitive suppliers. In response to this condition, the Department implemented a number of measures designed to broaden customer choice. These measures included requirements that distribution companies (1) provide suppliers with customer lists including names, addresses and rate classifications of Default Service customers (D.T.E. 01-54, at 6), (2) compile active suppliers lists (D.T.E. 01-54, at 6-7), (3) expand information on Default Service customer lists to include historic usage data and customer delivery points (D.T.E. 01-54-A at 9-13, D.T.E. 01-54-B at 21-22), and (4) add Standard Offer Service customers and customers of competitive suppliers to its customer lists (D.T.E. 01-54-A at 23, D.T.E. 01-54-B at 20-21). The Department also approved guidelines by which competitive suppliers could obtain customer authorization electronically (D.T.E. 01-54-B at 26-28).

Notably, all of these measures involve the reduction or elimination of barriers to competition, and do not involve efforts to purposefully increase prices or otherwise alter the provision of accurate price signals to customers. While the Time to Choose Program includes

information is provided, either in this docket or in the Department's review of the Mass. Electric December 1, 2003 Reconciliation Filing (D.T.E. 03-126). (CPS again reserves its right to address the SOAF presented by Mass. Electric in its December 12, 2003 letter, as well as any additional testimony or documentation regarding the SOAF, in either this docket or in D.T.E. 03-126.)

some educational and informational elements which potentially are consistent with the types of initiatives required by the Department in D.T.E. 01-54, the linchpin of the Time to Choose Program – a proposal to maintain the SOSFA at the current level of 1.424 cents per kilowatt-hour through the end of the Standard Offer Service period regardless of actual fuel costs paid to wholesale suppliers - - goes beyond facilitation of competition.

There is value in restating that when barriers are eliminated and markets are allowed to follow their natural course, competitive markets indeed have worked. As of September 2003, 21.4% of all Massachusetts load was served by competitive suppliers – 42.3% of large C&I customers, and 31.5% of all C&I customers. Assuming that all customers of competitive suppliers were previously Default Service customers, the percentage of former Default Service customers now served by competitive supply is 47.9%, 69.0% and 58.5%, respectively.⁵

C. The Time to Choose Program Ignores Other Key Department Objectives for Industry Restructuring

While the Department consistently has worked to remove or reduce impediments to competition, the Department has not seen competition as an end in and of itself. In fact, the Department recently stated that:

“Competition is the means to an end – that end being maximizing consumer welfare. Maximizing consumer welfare means minimizing long-term costs to consumers while maintaining the safety and reliability of electric service. If consumer welfare is maximized with very few customers switching to competitive suppliers, it is not a policy failure, as long as there is free choice and there are no artificial impediments for either suppliers or consumers. In this Order, we are removing what we identify as artificial impediments and are creating a more efficient market structure with better price signals and a more stable market framework.”

⁵ These percentages are derived from Massachusetts Division of Energy Resources 2003 Electric Power Customer Mitigation Data, September 2003 update. See <http://www.state.ma.us/doer/pub-info/migrate.htm>.

Default Service Notice of Inquiry, D.T.E. 02-40-B at 6 (2003). Mass. Electric's Time to Choose Program establishes customer migration from Standard Offer Service to competitive supply as an overarching goal (Time to Choose Program filing at 5-6), a goal which eclipses – and, in fact, ignores – the other critical goals articulated by the Department, such as accurate price signals and a stable market framework. In both the Standard Offer Service⁶ and Default Service⁷ contexts, the Department has acknowledged the slower migration of smaller customers to competitive suppliers. The Department, however, has recognized that other goals, *i.e.*, a stable, more efficient market structure with better price signals, may be more important to achieve for these customers during the transition period established for industry restructuring in Massachusetts. Accordingly, the Department has rejected those strategies designed to bring more options to smaller customers when those strategies have gone beyond the removal of competitive barriers and have ventured into areas where the Department lacks legislative authority. *See* D.T.E. 02-40-B at 32.

While Standard Offer Service is different from Default Service, the Department nonetheless has viewed Standard Offer Service as “maximizing consumer welfare” during the transition period. Moreover, the rates established for Standard Offer Service during 2004 -- 5.1 cents per kilowatt-hour plus a properly supported SOSFA -- have long been accepted by the Department and other market participants as a key element of the “game plan” for the Massachusetts electricity market in 2004. Among other things, Mass. Electric's Time to Choose Program, and, in particular, the SOSFA rate at the core of the proposed Time to Choose

⁶ “Customer migration statistics....indicate that residential and small commercial and industrial customers are not currently turning to the competitive market in significant numbers.” D.T.E. 01-54-B at 9.

⁷ “Conversely, there are few competitive options available for residential and small C&I customers....” D.T.E. 02-40-B at 7.

Program, would unnecessarily disrupt the stable market framework structure established by the Department for this transition period and thereby violate a number of the Department's key restructuring principles.

D. *The Department Previously Has Rejected the Use of Adders and Other Artificial Price Signals to Spur a More Competitive Market*

Since the outset of restructuring in Massachusetts, the Department consistently has underscored the importance of sending accurate price signals to customers. In its most recent examination of Default Service pricing and procurement, the Department required distribution companies to procure Default Service supply for medium and large C&I customers on a quarterly basis rather than a twice yearly basis because quarterly procurements "should provide improved price signals" for these customers. Default Service Notice of Inquiry, D.T.E. 02-40-C at 20 (2003). Similarly, for residential and small C&I Default Service customers, the Department required distribution companies to revise their procurement practices so as to procure 50 percent of Default Service supply semi-annually, for 12 month terms, instead of procuring 100 percent of Default Service supply each six months. Again, the Department saw this revision in procurement practices as a better means of "striking a balance between price certainty and price efficiency." D.T.E. 02-40-B at 45.

Notably, in seeking an appropriate balance between accurate price signals and price certainty in its Default Service investigation, the Department analyzed a range of procurement methods and determined the accuracy of price signals associated with each method. In other words, while some methods provided more accurate price signals than others based on the timing of the procurement or the frequency of the procurement, unlike Mass. Electric's Time to Choose Program, none of the Default Service procurement methods considered by the Department involved artificial, non-market pricing.

Moreover, it should be noted that the Department previously has rejected a Mass. Electric Default Service proposal that relied on the establishment of artificial pricing. In D.T.E. 02-40-B, Mass. Electric proposed an approach under which a new “basic service” provided by competitive suppliers would replace the current Default Service provided by distribution companies to residential and small C&I customers. Under its proposal, Mass. Electric would divide its residential Default Service customers into three similar groups and then conduct a separate auction among competitive suppliers to serve each group. Based on auction results, Mass. Electric would next assign each residential group to a different competitive supplier and “basic service” prices would be set equal to the highest of the three winning bids “in order to create (1) an economic incentive for residential customers to move to the competitive market, and (2) a margin for competitive suppliers, including the basic service suppliers, to market these customers.” The resulting overrecovery would be credited to the account of those customers not receiving Standard Offer Service. D.T.E. 02-40-B at 26. The Department ultimately did not adopt Mass. Electric’s attempt to use artificial price signals to spur a more competitive market for smaller customers. *See* D.T.E. 02-40-B at 30-33.

Finally, in an earlier investigation of Default Service procurement and pricing, the Department rejected the proposal by competitive suppliers to include an “add-on” in Default Service retail prices – an add-on designed to represent the marketing costs incurred by retail suppliers in soliciting and enrolling customers. Here, the Department stated, “[W]hile it is critical that all costs of providing default service be included in the retail price to provide an accurate price signal, it is inappropriate to include artificial costs for the purpose of spurring

competition.” Pricing and Procurement of Default Service, D.T.E. 99-60 at 99-60-A at 11 (2000).⁸

Where the Department has rejected these types of adders and artificial price signals for Default Service, which of the two services was designed to be the closest to market as possible, it seems incongruous to implement the Time To Choose Program, which employs a similar type approach to Standard Offer Service, especially at this time.⁹

As detailed in Section II.A., above, the Time to Choose Program represents a further attempt by Mass. Electric to use non-market pricing to spur retail competition. As demonstrated herein, this latest program violates a number of the Department’s objectives -- including the objectives of maintaining a stable electricity market and maximizing consumer benefits -- through the transition period of industry restructuring in Massachusetts.

E. *The Timing of Mass. Electric’s Proposed Time to Choose Program is at Odds With the Objectives of the Transition Period Established by the Legislature*

It is unclear why Mass. Electric believes it is compelled to unnecessarily increase Standard Offer Service prices at precisely the time when Standard Offer Service prices have reached market levels. In its Time to Choose Program filing, the Company notes that “[T]he price shift contemplated in the original design of the Standard Offer Service pricing pattern is now occurring.” Time to Choose Program filing at 3. This price shift will continue to occur

⁸ CPS acknowledges that base Standard Offer Service rates were never designed as a proxy for market price; instead, the Restructuring Act required the Department to set Default Service rates at the market price. Nonetheless, once Standard Offer Service rates exceeded market rates in the later years of the transition period, it was expected that customers would respond to market price signals and begin to seek competitive options. Allowing for adders at this point – whether in the form of adjustments to the base Standard Offer Service rate or to the SOSFA – contravenes the same Department principles with respect to proposed adders for Default Service rates.

⁹ The Department could not approve Mass. Electric’s Time to Choose Program - - and, in particular, Mass. Electric’s proposal to fix its current SOSFA through the end of 2004 - - without reversing significant precedent relative to the appropriateness of “adders.” Of course, if the Department wished to revisit the broader “adder” issue, the Department would need to open a new proceeding.

regardless of whether Mass. Electric fixes its SOSFA as proposed in its Time to Choose Program or properly calculates its January 1, 2004 SOSFA in accordance with the Department's SOSFA Letter Order and its restructuring settlement.

Where the Department consistently has refrained from requiring adders or other proposals designed to artificially raise the price of Standard Offer Service - - *even during periods when all parties agreed that Standard Offer Service was priced significantly below market* - - why would the Department choose this time, *when Standard Offer Service prices finally have reached market levels*, to set Standard Offer Service at levels which send inappropriate price signals? Mass. Electric argues that "migration from Standard Offer Service to the market prior to the end of Standard Offer Service reduces the level of Default Service load that would need to be procured at the end of the Standard Offer Service period". Specifically, the Company seeks to avoid what it characterizes as the "cliff effect" associated with the imminent end of Standard Offer Service. Time to Choose Program filing at 5-6. Surely, however, pushing Standard Offer Services customers "off the cliff" prematurely is not a reasonable means of avoiding the possibility that those same customers will be left standing on the cliff in fourteen months, particularly where the Legislature in enacting the Restructuring Act viewed 2005 as the appropriate time for Standard Offer Service customers to enter the competitive market or move to Default Service.

In fact, the Time to Choose Program appears to be based on misconceptions regarding the nature of Standard Offer Service and the transition period required by the Legislature. Mass. Electric notes that in approving its restructuring settlement, the Department stated that the design of Standard Offer in that settlement "avoids the need for all customers to exercise choice immediately," and that said design "will lead to a progressive increase in competition as the

Standard Offer price ceiling rises, and any short-term impairment to competition will be cured over time.” Time to Choose Program filing at 2, *citing* D.P.U./D.T.E. 96-25-A at 34-36. Mass. Electric goes on to note that the objectives articulated by the Department with respect to Standard Offer design “are now being realized.” *Id.* at 2. Even if Standard Offer Service prices were not for the first time consistently exceeding market prices, there would be no cause to disrupt predetermined Standard Offer Service pricing and the requirement that Mass. Electric’s SOSFA be based on “properly supported fuel costs” at this time. There certainly is no reason to disrupt market forces with an artificially inflated SOSFA when circumstances are unfolding precisely as the Legislature and Department envisioned.

Here, again, it is important to revisit the different purposes of Standard Offer Service and the SOSFA. Standard Offer Service was established as a transitional service, with pre-determined annual increases in base rates designed to encourage more customers to seek competitive options over time. The public policy objectives associated with the lengthy period of transition ultimately were embraced by the Legislature, the Department, and the signatories to the various restructuring settlements.

SOSFA, however, was established with a very different purpose. Simply put, the SOSFA was designed as a mechanism to pass through fuel costs to Standard Offer Service customers, and to ensure that no other customers subsidize Standard Offer Service fuel costs – or, for that matter, benefit from rate reductions associated with fuel price overpayments. Unlike the base rates, SOSFA was not designed as a tool to transition customers to seek competitive options over time, and Mass. Electric’s Time To Choose Program misuses the SOSFA mechanism by fixing the SOSFA at an artificially high level in order to stimulate migration off of Standard Offer Service.

III. Mass. Electric's Proposed Time to Choose Program Violates Mass. Electric's Restructuring Settlements and the Requirements of the 1997 Restructuring Act.

In its letter seeking Department approval of its Time to Choose Program, Mass. Electric argues that the program is consistent with Mass. Electric's restructuring settlement in D.P.U./D.T.E. 96-25.¹⁰ This is not the case. The proposal violates at least two fundamental provisions of the settlement agreement: (1) that the standard offer be the fixed price set forth in the settlement agreement, subject only to adjustment based on the fuel index incorporated into the Standard Offer Service tariff; and (2) that the sum of the unbundled components of Mass. Electric's rates give consumers taking standard offer a guaranteed rate reduction of 10 percent for the transition period. The proposal thus constitutes a material change in the settlement agreement, which could only be approved if agreed to by all parties to the original settlement and then approved by the Department as being in substantial compliance with the Restructuring Act. Here, Mass. Electric has made no attempt to show that the other parties to the settlement agreement will consent to the change in the structure of Standard Offer Service called for by the proposal.

As noted, the Time to Choose Program proposal violates two fundamental aspects of Mass. Electric's restructuring settlement agreement. First, the proposal would violate the settlement agreement's structure for Standard Offer pricing. The agreement provided that Mass. Electric's retail delivery rates during the transition period would be composed of a number of components, including:

¹⁰ CPS notes that Mass. Electric's filing refers only to the Mass. Electric restructuring settlement, which was reviewed by the Department in D.T.E./D.P.U. 96-25. Because two of the wholesale standard offer agreements at issue here were executed with Eastern Edison Company, the Department should also examine the consistency of the proposal with the Eastern Edison restructuring settlement, which was reviewed by the Department in D.T.E./D.P.U. 96-24. Except where noted, the settlement agreement cited herein is the Eastern Edison settlement agreement, which is substantially similar to the Mass. Electric settlement agreement.

A standard offer for service during a transition period that is fixed for the period through December 31, 2004 subject only to a fuel index, which is on the following schedule:

<u>Calendar Year</u>	<u>Price per kilowatt-hour</u>
1998	2.8 cents
1999	3.1 cents
2000	3.4 cents
2001	3.8 cents
2002	4.2 cents
2003	4.7 cents
2004	5.1 cents

Settlement Agreement at 8 (emphasis added).

The settlement agreement goes on to describe the Standard Offer in more detail, stating that "Eastern's standard offer prices are guaranteed, subject to the fuel price index described in Attachment 7." Settlement Agreement at 16 (emphasis added). Attachment 7 is the proposed design of the Standard Offer wholesale auction. It also sets forth the above customer rates for Standard Offer Service, and then describes the "fuel price index" that is the only adjustment allowed to be made to the customer rate:

The Customer Rate in effect for a given billing month is multiplied by a "Fuel Adjustment" that is set equal to 1.0 and thus has no impact on Customer Rates unless the "Market Gas Price" plus "Market Oil Price" for the billing month exceeds the "Fuel Trigger Point" then in effect . . .

Attachment 7, at page 5 of 7 (emphasis in original).¹¹

Thus, the settlement agreement called for a "guaranteed" Standard Offer Service price that would be subject to adjustment only by the Fuel Adjustment described in Attachment 7. The retail Standard Offer Service tariff submitted with the settlement agreement adopted the identical

¹¹ The attachment defines each of the terms "Market Gas Price," "Market Oil Price," and "Fuel Trigger Point" and the calculation of the "Fuel Adjustment" using the formula below:

$$\text{Fuel Adjustment} = \frac{(\text{Market Gas Price} + \$0.60/\text{MMBtu}) + (\text{Market Oil Price} + \$0.04/\text{MMBtu})}{\text{Fuel Trigger Point} + \$0.60 + \$0.04/\text{MMBtu}}$$

structure for Standard Offer Service pricing: a guaranteed price for each year of the transition period, subject only to the fuel adjustment as calculated above.

As described in detail in Section II.A., above, Mass. Electric's SOSFA proposal in its Time to Choose Program is inconsistent with the Fuel Adjustment formula set forth in the settlement. Accordingly, there is no basis for a finding that the proposed Time to Choose Program - - and, in particular, the SOSFA proposal advanced by Mass. Electric - - is consistent with the settlement agreement.

The net effect of the SOSFA proposal in Mass. Electric's Time to Choose Program would be *guaranteed higher prices* for Standard Offer Service customers, which would violate another fundamental aspect of the settlement agreement: guaranteed price reductions subject only to the fuel price adjustment as properly calculated pursuant to the tariff. The settlement agreement calls for at least a ten percent rate reduction for Standard Offer Service customers through the transition period, adjusted to exclude the fuel price index set forth in Attachment 7. Settlement Agreement at 19. The Department has required that the rate reductions called for in the settlement agreements be reconciled each year in order to account for the increasing floor price for Standard Offer. Mass. Electric's filing ignores the fact that its proposal results in a permanent increase in the Standard Offer Service price, apart from a properly calculated fuel index, which should be accounted for in showing compliance with the rate reductions required by the settlement.

The amount of the Standard Offer Service rate increase that should be accounted for can be calculated easily. Based on its December 12, 2003 letter, Mass. Electric represents that the appropriate SOSFA amount is 1.223 cents per kilowatt-hour. Therefore, absent a decrease in other components of the bundled Standard Offer Service rate, Mass. Electric's SOSFA proposal

in its Time to Choose Program would not be consistent with maintaining a 10 percent discount, and thus would be a violation of its settlement agreements.¹²

Mass Electric's proposal also violates the Restructuring Act in this respect. The Act required not only a 10 percent rate reduction effective March 1, 1998, but a total reduction of 15 percent effective September 1, 1999. G.L. c. 164, § 1A.

CONCLUSION

Based on the foregoing, CPS believes that the Department should not allow Mass. Electric to proceed with its Time to Choose Program at this time because it is not consistent with the Restructuring Act, Mass. Electric's settlement agreements, or the Department's consistently articulated restructuring policies, including the policies relative to the SOSFA and the development of wholesale and retail markets.

At the same time, consistent with the Department's SOSFA Letter Order, CPS recommends that the Department allow a SOSFA of 1.223 cents per kilowatt-hour to take effect on January 1, 2004 for Mass. Electric's Standard Offer Service customers, consistent with the formula-based SOSFA presented to the Department in Mass. Electric's December 12, 2003 letter.

CPS looks forward to working with the Department, Mass. Electric and other parties as the Department continues its review of Mass. Electric's Time to Choose Program filing and

¹² As discussed above, in its December 12, 2003 letter, Mass. Electric indicated that a formula-based SOSFA calculation of 1.223 cent per kilowatt-hour also requires implementation of a SOAF. As indicated in Section II above, CPS reserves its right, among other things, to address the SOAF described in the December 12, 2003 letter in either this docket or in D.T.E. 03-126.

related SOSFA and SOAF calculations in this proceeding and in D.T.E. 03-126, and reserves its rights to provide additional comments in these dockets as discussed herein.

Respectfully submitted

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